

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

CRP.No. 1105 of 2005()

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AGAINST THE ORDER DATED 27/06/2005 IN IA. 702 /2004 IN  
OS.100/1995 of ADDL.SUB COURT, PALAKKAD

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REVN. PETITIONER: RESPONDENT/PLAINTIFF

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ACHUTHANKUTTY MENON @ K.P.A.MANI,  
PALAKKAL VETTAKULAM, VIA-KARAKURUSSE,  
POMBRA P.O., PALGHAT,

BY ADV. SRI.T.C.MOHANDAS  
SRI.T.M.SUNIL  
SMT.S.CHITHRA

RESPONDENT: PETITIONER/DEFENDANT.

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GOPAKUMARAN, S/O.LATE KUMARA MENON,  
P.K.HOUSE, KALLANMARATHODIYIL, ELAMBLASSERY,  
POMBRA P.O. OTTAPPALAM, PALAKKAD DISTRICT.

BY ADV. SRI.BINOY VASUDEVAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD  
ON 18/07/2007, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:

ORDER ON I.A.NO.3148/05 IN C.R.P.NO.1105 OF 2005

DISMISSED.

18.7.2007

SD/- PIUS C.KURIAKOSE, JUDGE.

**PIUS C. KURIAKOSE,J.**

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C.R.P.No.1105 of 2005  
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Dated: 18<sup>th</sup> July, 2007

**ORDER**

Under challenge in this C.R.P. is order passed by the trial court on an application under Order IX Rule 13 C.P.C. allowing an application and setting the ex parte decree aside without imposing any conditions. The suit was one for recovery of money and the respondent defendant was served by affixture as ordered by the trial court. Apart from affixture, publication had been made under Order V Rule 20 in Kerala Kaumudi Newspaper and in Dhinavartha Newspaper also. It is only after serving summons on the defendant by all these modes that he was set ex parte. The petitioner points out that the case of the respondent stated through the affidavit that he came to know about the decree only when he got notice regarding the execution petition was absolutely false. The petition filed by the respondent under Order IX Rule 13 was hopelessly time barred and there was no application at all seeking condonation of delay.

2. I have heard the submissions of Smt.S.Chithra, learned counsel for the petitioner and those of Mr.Binoy Vasudevan, learned counsel for the respondent.

3. Smt.Chitra would assail the impugned order very forcefully.

However, having gone through the order I find that the court below has given reasons for sustaining its order which is passed exercising a judicial discretion vested in it. The contention that the application was time barred is also taken note of by the court below which has referred to the judgment of this court in **Unni Raman v. Padmanabhan** (1987 (2) KLT 1023) and found that there was no separate application for condonation of delay. The averments in the affidavit offered sufficient explanation regarding the apparent delay. After all what has been done is to set aside an ex parte decree and pave the way for a disposal of the cause on merits after a regular adjudication.

4. At the same time, I am in agreement with the learned counsel for the petitioner who submits that the application should not have been allowed unconditionally. Substantial amounts have been expended by the petitioner towards publication charges and there is some indication that there was negligence on the part of the respondent to enter appearance before the court in response to the summons received. Considering these aspects, I am inclined to modify the impugned order to the extent of providing that the order impugned in this C.R.P. will become operative only if the following

conditions are satisfied by the respondent:

1. The respondent pays a sum of Rs.10,000/- by way of cost to the petitioner within one month of his receiving copy of this order.
2. The respondent shall furnish security before the court below for the entire plaint claim within four months of his receiving copy of this order.

If the above conditions are not complied with, the impugned order will stand set aside and the I.A. will stand dismissed.

The C.R.P. is disposed of as above. No costs.

srd

**PIUS C.KURIAKOSE, JUDGE**